Town of Milford
Zoning Board of Adjustment Minutes
September 5, 2013
Case #2013-13
Brad Wilkins
Equitable Waiver

Present: Fletcher Seagroves – Chairman
Laura Horning – Vice Chairman
Zach Tripp
Kevin Taylor
Michael Thornton – Alternate
Katherine Bauer – Board of Selectmen representative

Absent: Bob Pichette
Paul Butler – Alternate
Len Harten - Alternate

Secretary: Peg Ouellette

The applicant, Brad Wilkins, owner of Map 25, Lot 91, 37 Cottage St, in the Residence A District, is requesting an equitable waiver of dimensional requirements from Article V, Section 5.02.5:B, for a porch, under construction, located nine (9) feet +/- from the side setback line where fifteen (15) feet is required, in accordance with Article X, Section 10.07

Minutes from the September 5, 2013 meeting were approved on November 21, 2013

F. Seagroves, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinances and the applicable New Hampshire statutes. He continued by informing all of the procedures of the Board; he introduced the Board. The notice of hearing was read into the record as well as the list of abutters; Brad Wilkins, applicant and owner of 37 Cottage Street was present. He then invited the applicant forward to present his case.

B. Wilkins stated that he purchased the house at 37 Cottage St. It had been abandoned for a while and was in poor condition. It had a four-season porch with a flat roof and water had gotten in, causing mold and rot. He cut the roof off and a side and left it as a porch for the last two years; this year the stairs started falling down and found there were no proper footings. He began tearing into it more and putting the structure back up in the existing spot. When he was about 75% done, Tim Herlihy, the building inspector, came by and asked for his permit. He hadn't thought he needed one because he was only fixing what was there. He stopped the work and filled out the application for permits. He was told there is a setback of 15 ft, but he had 9ft 9 in which is where the existing one was. The house is about 8ft 8 in from it, next to the Crisafulli house.

F. Seagroves asked if he had changed anything.

B. Wilkins said the old one was about 12' x 10' and he expanded it out an extra 2', which from his understanding runs parallel to the boundary, which is why he was in violation.

K. Taylor said it was more that he started repairs before things rotted away.

B. Wilkins agreed.

K. Taylor commended him on the job he has done with the house and said this was fixed for safety concerns.

B. Wilkins responded that was correct. Those stairs are the exit out to the back yard; he wasn't able to use it for a little while-and he figured he'd better do that before his parents came.

Z. Tripp asked, for a point of clarification, if the original 12 x 10 porch was 9ft 9in from the boundary line, and if the extension was still 9ft 9 in, parallel to the property line.

B. Wilkins said it was still 9ft. 9in; he kept the same distance and line.

F. Seagroves said he didn't encroach into the setback any more than it had been.

Z. Tripp asked when the original house was built.

B. Wilkins said probably 1880 or so.

F. Seagroves stated this was the reason why people should talk to the town and ask what needs to be done. This had probably caused the applicant to stop the work for a period of time.

B. Wilkins said it had.

F. Seagroves asked if there were any comments from the board; there were none so he asked if there were any comments from the audience and there were none. He closed the public portion of the meeting. He then asked the applicant to go over the criteria in the application for an equitable waiver:

Explain how the violation was not noticed or discovered by any owner, former owner, owner's agent or representative or municipal official, until after the structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value:

I believe the porch was not discovered because it was on the back side of the house. It had been on-going for two and half months and was brought to my attention about being in violation by the building inspector.

Explain how the violation was not an outcome of ignorance of the law or Ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner or owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in Ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority:

I can in no way claim ignorance of the law and I feel my actions were not in bad faith. I simply was trying to fix an existing porch that I believed to be properly zoned which had extensive rot and was no longer safe. Once I got into the project what went from a repair turned into replacing. In hindsight once I got past the point where the old porch could not be saved I should have consulted with the building department.

Explain how the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property:

The original porches roof was falling in and allowing rain to get inside causing black mold and extensive ant and bug damage while compromising the foundation of the house. The windows were broken and the siding was coming off. I believe the new structure is not a nuisance because: A. It is replacing a structure that already existed. B. It is safer and will not fall down causing injury to anyone. C. The broken windows and siding are replaced with new ones that are more aesthetically pleasing and enhancing the value of the property and neighborhood.

Explain how that, due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected:

The cost of what was to be a repair of the porch has taken over 50% of my savings and I still owe non-refundable money for the siding and a window. The cost of correction would only place a financial burden on my family and me. I don't see any public benefit in removing the porch.

F. Seagroves read a letter received from Mrs. Crisafulli (abutter) on behalf of herself and her husband saying they had no objection.

There being no further questions or comments from the Board, the Chairman moved on to the consideration of the equitable waiver criteria:

1. That the violation was not noticed or discovered until after a structure in violation had been substantially completed or until after a lot had been sub-divided by the conveyance.

Z. Tripp said the house was already in the setback. The porch was no further into the setback than before.

L. Horning agreed. The violation was not noticed or discovered until after the structure was substantially completed. If you are repairing an existing structure and, as the applicant stated, believed the building was already zoned correctly, it would not have occurred to the average individual. She repeated the Chair's comments about the importance of checking with the building inspector; even if the building is property zoned currently you still need to have the building inspector there.

K. Taylor said that applicant was just replacing a safety hazard and thought everything was above board. You should check with the building inspector but hoped he was doing it in good faith.

M. Thornton said it was a one-for-one replacement except for a 2'extension which didn't encroach on others' property. Yes, it is not a violation.

F. Seagroves agreed. He commented the applicant probably bought 2x4s and didn't want to have to cut them. He reiterated that this situation is the reason to go to the building department for help. It is better to do it the right way.

2. That the violation was not an outcome of ignorance of the law, or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith but was instead caused by either a good faith error in ordinance interpretation or applicabilitymade by a municipal official.

L. Horning said she didn't believe the violation was the outcome of deliberate ignorance on the part of the applicant, or failure to inquire or obfuscation, or whatever is included in the

language. She didn't believe there was deliberate malice on the part of the applicant. Any average person could have gone out there and begun to replace a few boards, and many guys would not stop at one rotted board. She didn't believe it was done as a deliberate act of not knowing or understanding the law.

K. Taylor said the applicant was just fixing or replacing. He didn't believe applicant was doing anything wrong.

M. Thornton said it was a good faith error in interpretation of the ordinance by this individual. He says yes.

Z. Tripp said the encroachment was pre-existing; extending the porch was a good faith error.

F. Seagroves agreed with what was said. You start a project and it turns into something bigger. You think you are doing something right.

3. That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with any future uses of such property.

K. Taylor said the applicant did prevent a private nuisance. The porch was not safe. It would be unsafe for children.

M. Thornton said he didn't know how you discover steps are rotted except by stepping on them. He didn't feel there was a public nuisance. He would say it didn't interfere with future uses of the property.

Z. Tripp agreed. There is no interference of future uses of the property and no public nuisance.

L. Horning felt he prevented a public nuisance; there may be a public nuisance in some cases when you live in close proximity, like in that area. Also the fact that ambulances or fire personnel could have been called there if a child became entrapped in the porch or fallen through the porch. It didn't cause him to diminish the value of other property; it probably enhanced it. As heard from the neighbor, it doesn't interfere with their private use of their property. It doesn't pose a public nuisance. Future use of the property is enhanced.

F. Seagroves agreed. He didn't see any public nuisance. It would not diminish the value of other property. It would help it. He is not interfering with the future use of the property. He was doing it as a safety project.

4. That due to the degree of past construction of investment the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

M. Thornton commented that he thought the applicant should go ahead and complete the project he started which was made in good faith for the public benefit as well as the owner.

Z. Tripp said reverting the construction back would be no gain to the public. The neighbor already agreed that it was acceptable.

L. Horning said the spirit of the ordinance is to create balance and equity. Looking at this text of the ordinance, Variance, Special Exception, and other kinds of criteria, they look at whether the injustice to the individual is outweighed by public gain. There is no public gain outweighed by the injustice of making the applicant tear the porch apart. There is no gain to the public and, in her opinion, it would be undue injustice to the individual.

K. Taylor said yes.

F. Seagroves said yes. The cost of putting everything back outweighs what the public would gain by doing so.

F. Seagroves asked if the board had any additional comments or questions; they did not so he called for a vote.

1. That the violation was not noticed or discovered until after a structure in violation had been substantially completed.

Z. Tripp – yes L. Horning – yes K. Taylor – yes M. Thornton – yes F. Seagroves - yes

2. That the violation was not an outcome of ignorance of the law, but caused by a good faith error or existed for ten years or more.

L. Horning – yes K. Taylor – yes M. Thornton – yes Z. Tripp – yes F. Seagroves - yes

3. That the dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with the permissible future uses of such property.

K. Taylor – yes M. Thornton – yes L. Horning – yes Z. Tripp – yes F. Seagroves -yes

4. That due to the degree of past construction of investment the cost of correction so far outweighs any public benefit to be gained.

Z. Tripp – yes L. Horning – yes K. Taylor – yes M. Thornton – yes F. Seagroves - yes

Kevin Taylor made the motion to approve Case #2013-13.

M. Thornton seconded the motion.

Final Vote

L. Horning – yes Z. Tripp – yes K. Taylor – yes M. Thornton –yes F. Seagroves - yes

Case #2013-13 was approved by a unanimous vote.

F. Seagroves informed the applicant he had been approved and suggested that he check back with the Building Dept. He mentioned to the audience the reason to go to the Building Dept. who can help. He had just read something about replacing windows, and they can tell if you are getting the correct windows.